BANKING CULTURE: REGULATORY ARBITRAGE, VALUES, AND HONEST CONDUCT

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I am glad to be at this timely and important conference.

Let me begin by saying that, on my reckoning, we are about a third of the way through the long period that it will take for finance to adapt to the post-crisis world, and for those outside finance to get comfortable with it again. This matters to assessing with things stand on establishing and embedding better conduct across the industry.

Back in 2009/10, when the reform programme was getting going, I thought the whole process of adjustment to a reconfigured equilibrium would take around a quarter of a century. Eight years after crisis broke in the summer of 2007, my view hasn't changed. At a technical level, not all the planned reforms are quite in place yet; there are, for example, outstanding issues such as the resolution of clearing houses and how far to constrain shadow banking. At a political level, it remains to be seen whether the US Presidential election race affects the terms of trade for finance. Even if none of that were so, important forces are yet to play out in the markets themselves. At the macro level, it will take some years for monetary policy and, thus, relative asset prices to normalize, and perhaps even longer to find out whether productivity growth will return to anything like its previous trajectory. And at the micro level, it will take time to see whether the shape and size of banks and banking are materially affected by the market discipline that higher equity requirements and new resolution regimes are designed to harness.

For financial intermediaries themselves, all that means that unavoidable uncertainty hangs over business models and strategies.

That is highly germane to this conference focus on conduct and culture because, although the new legal regimes for conduct seem to be settled, the rewards and incentives facing workers in the different parts of finance cannot yet be clear. We know more about the legal constraints on conduct than we know about the temptations financiers will face. In consequence, the deep culture of finance, the subject of this conference, is still being shaped.

In these comments, I therefore want to explore the role of leadership, values and incentives in getting us back to honest and sound finance. The half-life of the unease and anger prompted by finance's failures is not short, which means that how leaders lead over the next half-decade or so could make a big difference.

A memory

That something went badly wrong over the past 30 odd years is brought home for me by recalling a moment from my two-year secondment to Barings merchant bank during the mid-1980s. One day one of our more senior colleagues came out of his cubicle groaning something like, "Oh no, we've been sent the other side's draft document". I don't remember what the deal was, but in a takeover battle the printers acting for the opposition's merchant bank had mistakenly sent us one of their key documents. The response was to put the document back in the envelope without reading it, and to call our counterpart to let them know. I just wonder how many houses would do that today.

That episode would have been during 1985 or '86, before the Big Bank reforms of London's securities markets took effect. And I recount it partly because I have long thought that during that period the UK made a great mistake on its regulatory architecture. Some years before the Big Bang, Professor Jim Gower had been commissioned by the government to review the structure of investor-protection regulation, prompted as I recall by some scandals in retail finance. The proposed solution was that a number of Self-Regulatory Organisations (SROs) should be established, operating under a statutory umbrella. The problems with this were twofold. It is doubtful whether, in any circumstances, effective SROs can just be wished into existence by government, regardless of whether they have organic origins and authority to draw upon. But in any case, the premises behind the structure were invalidated by the Big Bang, which was planned after Jim received his commission but before the Financial Services Act 1986 came into effect.

With the doors of non-bank finance flung open, and long-standing commercial relationships upturned as a result, club-like policing structures were no longer viable. What London needed then was not a collection of shallow-rooted SROs, but a regulator modelled broadly on the US's Securities and Exchange Commission: a statutory agency charged with keeping and empowered to keep finance clean.

A step in that direction was, arguably, attempted in 1998, through the establishment of the Financial Services Authority (FSA). But, as an integrated regulator, charged with everything from stability through fairness and efficiency to honesty, in both wholesale and retail markets, across every sector of finance, the FSA was overloaded, to put it mildly. So only now, through the new Financial Conduct Authority, does London embark upon a road that might have been charted 30 years' ago.

Over those three decades, ground has been lost. The *mores*, norms, values, ethics, rewards, incentives of finance have all changed.

That is a pessimistic point of departure for some reflections on where we are and what might be done.

<u>Trust and incentives: a pessimistic starting point</u>

If there is a lack of external trust in finance, then the social standing of working in finance will be low, other than amongst the denizens of the sector itself. With no *intrinsic* reward, incentives will need to come from money and punishment.

The big question is whether we can invert this, and I suspect that we can, at least for parts of finance. Where a sector operates on the basis that the only reason for working in it is to make money and where the only impediment to wickedness is punishment by regulators or via the courts, an industry is likely to put little or no weight on virtue or values or duties to society. And in those circumstances, the sector is likely to be regarded with distaste by people in other walks of life.

This is a world where the talk is of incentives, but in which incentives are conceived narrowly and crudely. So narrowly and crudely, in fact, that even if the result were conduct within the law and in compliance with the rules, it would amount to law-abiding behavior in a values-free zone. That is a terribly fragile basis on which to erect global finance.

Not least it assumes that the credibility of enforcement is constant over time and across jurisdictions. Casual empiricism suggests that that condition does not hold. But if enforcement is episodic or uneven, then we should expect standards of conduct to lapse, perhaps disastrously, at some point again in the future.

What I am suggesting is that if we are to achieve something like honest business (and I deliberately say ' business', because the problems go well beyond the financial sector), then either

- we need people to be rewarded less in money and more in social standing, or

- we need arrangements that ensure that enforcement of conduct rules and laws is consistently credible over time and across jurisdictions.

The first entails addressing a profound market failure (in fact, the inability of market processes alone to generate the conditions for their existence). The second entails remedying a global government failure.

There are those --- and we cannot rule out that they are correct --- who will judge that our societies have moved beyond the point where the first course is feasible. That is to say, on that view we might have become societies where good business *ethics* can't be grounded in societal values, although good business *practices* might still be induced by fear and narrow self-interest.

I am not convinced that we could or should leave it at that. Unless society is confident that it can rely over the decades ahead on consistent coercion alone, we have to take the opportunity of a period of more rigorous enforcement to incentivize decent behaviour and, thereby, to induct the values that would embed that decency. To that end, I shall air some suggestions for what firms should put behind them and what they might begin to do more of. I do this recognizing that it won't be easy. Quite apart from the collective-action problems that impede even the virtuous from acting alone, which I shall discuss towards the end of these remarks, the rules-arbitrage that is part of daily life in finance is corrosive of healthy values, or so I shall argue.

To take the argument forward, we need to reflect on the role and unintended effects of rules in financial regulation.

The role and place of rules in regulation

Nearly every regulatory regime has, in my view, got into a muddle about the role of rules. Indeed, I think there is a dilemma that requires urgent but deep debate, and where the regulatory authorities almost certainly need the help of legislators.

The corrosive effect of rules arbitrage

I will assert three bold propositions, and then go on to explain them. They are:

1) Rules are ineffective in the preservation of stability
2) Rules are essential in the regulation of conduct
3) The prevalent use of rules in prudential policy has contributed to corrosive cynicism about rules in general and so about conduct rules.

Over the past quarter century, and especially since the late-1990s, rules have become the standard instrument of prudential policy: a model of write rules, monitor compliance, enforce against breaches. I believe this model to be fundamentally flawed. A regime designed to preserve financial stability starts (or should start) from a societal choice --- a political choice --- about how resilient the system should be. That standard of resilience should get cashed out in regulatory measures for different parts of the financial system. For banks, those measures include minimum capital ratios, minimum liquidity ratios, and so on. So far, so good.

But when those measures are framed in rules, and when firms are confident that the rules will be applied narrowly, to the letter as it were, epidemics of regulatory arbitrage follow. That is so whether the rules are complex or simple. If the rules are complex, regulated firms have incentives to take risk in forms that reduce, say, their regulatory capital requirements even when nothing material has changed economically. If the rules are simple, they have incentives to take risk via routes that simply step around the constraint; say via the composition of asset portfolios if they are subject to only a cap of their total assets/ equity leverage.

Meanwhile, unregulated firms have incentives to structure their activities in forms that replicate the economic substance of banking, insurance or whatever, but leave them outside the regulatory net.

This might be termed ‘regulatory avoidance’. It can have very high social costs, through instability and macroeconomic downturns. It is not an offence. Even if it were an offence, enforcement after the fact cannot undo the social and economic costs. The prudential endeavour is, in its essence, prophylactic not retributive[1]. But, in any case, regulatory avoidance is *not* an offence under a rules-based regime.

Conduct regulation is quite different from stability policy. Whether in wholesale or retail markets, it is vital that participants, customers and counterparties know the rules of the game. If something goes horribly wrong and it turns out that there was a gap in the rules, the rules need to be adjusted, but without retrospective effect. All this is central to the rule of law, and conduct regulations are, of course, legally binding rules issued by agencies under authority delegated by legislatures. It is delegated law-making. Breaches are to be punished, partly in order to deter bad conduct.

I put it to you that an environment in which arbitrage around prudential rules is endemic --- a normal part of life in financial firms --- fosters a culture of cynicism towards regulatory rules in general, a culture where concepts of ‘right’ and ‘wrong’ get blurred, eroded and infected.

[1] For a more complete account of this, see Tucker, “Micro-prudential versus Macro-prudential Supervision: Functions that make sense only as part of an Overall Regime for Financial Stability”, Boston Federal Reserve Bank conference, 2-3 October 2015.

If this is correct, it is a high cost to pay --- on top of the crisis of instability --- for the false turn taken by prudential supervision. But it points to some prescriptions for the regulatory regime, and for boards.

For the institutional architecture of regulatory regimes, it underpins the case for separating conduct regulation from prudential supervision. Workers in firms need to grasp that the rules of a conduct regulator are not the same *kind* of thing as prudential and stability policies. They are not fair game.

As to the boards of regulated firms, I would urge them to give up on regulatory arbitrage and the cynicism that it fosters towards society's ends and the people's welfare. This won't be easy, and I can hear industry leaders and participants complain that they won't know where to draw the line. But it is hard to believe that firms don't know when they've retained the bulk of the risk or the tail risk while escaping the regulatory tax. And if they don't know, from a prudential perspective they shouldn't be in that line of business since either the firm as a whole can't analyse the risks or management can't keep track of what middle management and workers are doing.

In other words, by eschewing pervasive arbitrage of prudential policies, boards and executive leaders would help to foster a less cynical approach to rules in general. Commercially, by giving up some of the superficial gains of prudential arbitrage, they might well reduce the probability of conduct fines and reputational damage.

But what of the conduct regime itself? I believe that that too needs deep debate and deliberation. Indeed, whereas the whole approach to stability policy has been debated and reformed somewhat since the crisis, I wonder whether there might have been less debate on the optimal high-level structure of a conduct regime. Please excuse me if that debate has occurred.

Replacing 'Rules versus Principles' with 'Rules and binding Principles'

One way of summing up the difference between prudential supervision and conduct regulation is that for the former it is the spirit that matters, whereas for conduct it is the letter of the rules that matters *at any particular time*. There is a lot of truth in this, but it would be reasonable for people to complain that, however detailed, conduct rules are always open to interpretation and, thus, that those working in finance will search for loopholes and, what's more, are entitled to do so.

This has been central to a debate that has being going on for decades about the relative costs and benefits of rules-based regulation and principles-based regulation of conduct in financial markets. A number of countries have flip-flopped between the two approaches over the past thirty years.

The familiar problem with principles is that they leave too much vague and underdetermined when, as I have argued, uncertainty should be minimized in the area of conduct regulation. The familiar problem with a regime of detailed rules is that it gives rise to artful interpretations, creative loopholes, and thus sows the seeds of its own demise. Further, it gives rise to an industry of expert advisors with a narrow commercial interest in preserving this kind of regime --- an articulate lobby for the status quo.

The truth is that the spirit of the rules ought to matter in the conduct arena too, because society expects it to. But we can't just leave it to regulators to construe their own rules with whatever they perceive to be their spirit; that kind of discretion shades into arbitrary power. What then should or could be done, or are we simply stuck?

One possible route would be to combine statutory principles with detailed regulatory rules. A set of Principles would be enacted in primary legislation, with a statutory provision --- binding on the courts --- that the detailed rules promulgated by the conduct regulator must be interpreted in the light of those Principles. So far as I know, this legislative structure has not been attempted in a major jurisdiction. It does not give rise to the radical indeterminacy that afflicts non-statutory principles, since the rules reduce open-ended uncertainty. But the interpretation of those rules is tied to their social purpose, as instantiated in the statutory Principles. It leaves the courts as the final arbiter of how the Principles should be construed, but it gives legislatures not regulators the responsibility of framing and specifying those Principles. I would think that it is worth exploring[2].

Principles, practices, and 'values statements'

I want to suggest that a determined shift away from regulatory arbitrage, underpinned by regulatory reforms along the lines I have been describing, might have the effect, over time, I stress over time, of helping to give values a place within the culture and operation of financial intermediaries.

Before suggesting some other changes to business practices, I want first to explain how incentives might be used to forge values. Please excuse a detour away from finance for a moment.

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[2] I first encountered this thought in discussion at Australian National University with John Braithwaite, who has canvassed it in the field of tax evasion versus avoidance. See J. Braithwaite, *Markets in Vice, Markets in Virtue* , Sydney and New York, Federation Press and Oxford University Press, 2005, especially Chapter 10, "Reforming the Law" ; J. Braithwaite, "Making Tax Law More Certain: A Theory", *Australian Business Law Review*, 31(2), 2003, 72-80; For the initial and more general formulation that goes beyond tax: J. Braithwaite, "Rules and Principles: A Theory of Legal Certainty", *Australian Journal of Legal Philosophy*, 27, 2002, 47-82. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=329400

The forging of values via incentives

There is a respectable body of work that seeks to explain the development and purpose of moral values and practices in terms of their positive effect on our collective welfare. We live together, civically and politically, and need norms and conventions for doing so: to avoid Hobbes' state of nature, if you like. This view can seem horribly cynical, resting morality on little more than its instrumental benefits. But it seems plausible that we reap those benefits only if we (or at least most of us) come to believe --- truly, genuinely, sometimes deeply believe --- in those values. Whereas driving on the right (or left) hand side of the road is a convention that we would ignore at our peril but is hardly the stuff of values, 'thou shall not murder' runs deeper. According to one's view of these things, our values are reinforced by our practices even if they do not always arise wholly from them.

When it comes to finance, things are in such a mess that both forging and reinforcing seem apt. For some people in finance --- and surely they exist --- their already sound values need to be reaffirmed and reinforced in the environment around them. For others, decent values need to be induced and inducted. Incentives can play an important role in this.

It seems, and perhaps this is putting it mildly, that there is a big negative externality when weak or inconsistent enforcement of rules combines with transformational remuneration to non-entrepreneurs: the bad externality is ethics-free finance. Society needs to flip the process, aiming to secure a positive externality by first changing the incentives.

If enforcement of rules and reduced pay can alter the incentives, statutory Principles, governing the interpretation of those detailed regulatory rule-books, can provide some of the content of the values that society wishes to restore and embed. In other words, our legislatures should codify in high level Principles the values they want to embed in finance.

This isn't just for the big financial centres. Indeed, it is not implausible to think that however thoughtful and determined the efforts of legislators, regulators and business leaders in those centres, it will be harder and take longer to achieve the desired cultural change there. Their heterogeneity, which is the very source of some of their commercial strengths, can dilute civic values and the peer pressures that can prevail in smaller communities. But what we have heard during this conference about the changes in the Netherlands and elsewhere offers the possibility that initiatives in the big centres, as set out at recent conferences on both sides of the Atlantic, can be reinforced by the efforts to reforge community values in smaller financial centres.

Getting out of doors: inducting civic virtue

At this point I want to draw on another recollection; one which signals another dimension of the problem.

In the pre-Big Bang world I was remembering earlier, there were lots of medium-sized firms. The heads and deputy heads of those firms represented them in and, therefore, *to* the outside world: to politics, the authorities, the public, and to their peers. As they did so, they (or some of them at least) discovered that they had a stake --- a stake deriving from the social role they played and the social standing that could go with it --- in the health of the system itself. As I like to put it, a world of many firms meant that many people had to go 'out of doors'. Doing so immersed them in a valuable process of civic socialization.

In a world of a few massive firms, my guess is that far fewer people in the industry feel that they personally have a stake in the health of the system. Far fewer people go out of doors. Being the head of a gigantic desk with layers of management above you does not easily give you the same sense of belonging to a system that comes from being at the helm of a modestly sized firm competing with similarly sized firms.

If that's even broadly correct, it poses the question of how to get those people out of doors, how to give them a stake in something bigger than their take-home pay and the living standards of their children and grand children. It is when one looks at it like this that the thought that motivates calls for finance to become a profession, requiring years of training like medicine or the law, is not so completely crazy. Finance is so hugely important to our economies and societies that we need each scandal to be an affront to workers in the industry: not just to their interests, not even only to their values, but to their sense of who they are, their identity. And I don't doubt that it was for some.

This is why the public outcry is valuable. And it is why pay needs, somehow, to come down, so that being rich can't compensate for society's distaste, and so that society's valuing the contributions of financiers can mean something again.

Stories and 'values statements'

One way to help embed values within a firm is for its leaders to share stories of its past with those coming up through the ranks, underlining what worked, what the firm is for, its heroes --- stories they believe and which matter for them personally. If a firm has no history, with each generation detached from its predecessors, today's incumbents are just passing through, grabbing what they can on the way: consuming rather than investing in the firm's reputation. They are unlikely to value what they leave behind once they have taken what they can --- an environment in which some might even risk trashing the firm's standing for personal gain if it carries no value for them, if it matters not a jot to them being able to say later in life who they worked for, how they chose to spend their working life.

One might say: if that were unavoidably the case, better for each generation to have to start a new venture, with each financial intermediary having only a finite life. If policy makers instinctively reject a mass break-up of firms of any size because of the transactions costs and uncertainties for society, those costs must be set against the costs of history-free and so values-free firms. If that course is rejected, it must be because we trust business leaders to turn culture around. Leaders lead in part by drawing on those parts of the past that are useful to facing the future.

Let me repeat: a firm with no remembered history is unlikely to be a firm that, as a firm, a collective of individuals working together, has values. There is something faintly ridiculous about senior management teams sitting around, in some odd imitation of Kantian philosophers, drafting 'values statements'. There is something slightly sad about management using staff 'focus groups' in order to discover what values might be embedded in the firm they lead but don't know. And there is something distinctly eerie about bringing in consultants to help draft 'values statements', which I assume some firms do since such consultancy services seem to exist (although one wonders about the delusion or cynicism they risk carrying in *their* own corporate DNA).

I should emphasize that I believe that Values Statements *can* be useful, might play a role in resurrecting honest finance, and that staff are a vital part in affirming and sometimes constituting a firm's values. But such Statements need to reflect and draw on the values truly found in their particular firm, and so in *its* history, in *its* stories, not just peddling what they think society wants to see. And where it turns out that no values worth having are truly embedded, if a firm has no more to fall back on than ‘make money’ and ‘obey the law’, better to face up to that, better for leaders to start from the beginning.

These issues can certainly afflict small firms, but they seem likely to be more prevalent amongst conglomerates with disparate lines of business based on distinct business models. And they are probably harder still to overcome in those conglomerates formed through an extended sequence of mergers and takeovers, in which either no organic culture survives at all or plural and probably rival cultures persist here and there around the group, perhaps for years.

These are hazards of capitalism, and, I repeat, are by no means confined to finance. But for finance, perhaps because crisis and scandal came together, as it did in the 1930s, the public has been saying that it is their business too, that the spillovers matter. And, in any case, because financial services firms enter in contracts with their customers that are often long-term or otherwise rely on trust, finance has a clear interest in addressing these problems. Look at it another way: everyone is a customer of finance, so the customers who bear the private costs are also, in our democracies, the voters who elect our governments after they have borne the social costs. The leaders of financial firms carry that with them as a basic condition of being in business.

The terms of trade between firms: ending mercenary poaching

Against that background on how incentives and values need to support each other, I want to go through one further set of issues and the corresponding set of actions that business leaders could usefully take. I believe the issue matters in itself, but it also helps to highlight the collective-action problems that likely plague any efforts to address the subject of this conference.

One of the more striking features of modern finance (indeed, modern commerce) is whole teams moving from one firm to another. Poaching in the sense of active soliciting is no doubt denied, and perhaps that's correct in a strictly legal sense. But something not a million miles away plainly goes on under a common sense understanding.

I suggest that this matters to culture, values, honesty because if groups of young (and not so young) people are treated like mercenaries, we shouldn't be surprised when they think and behave like mercenaries.

The habits of thought and conduct that we associate with mercenaries are, I would suggest: technical proficiency; dedication to the task at hand; orientation to immediate, visible results; being paid partly at the end of the assignment, and partly upfront to get them to turn up; indifference, beyond the terms of their contract and its enforceability, to whoever has hired them; calculated personal risk-taking weighed in terms of expected financial returns; services granted to the highest bidder.

In a field without widespread economic and social externalities, one might ask who cares. But in finance, the social costs can be high, so it is of wider interest, for all the reasons covered already.

Boards could help by deciding that their firm will not poach teams or, if approached, will not buy teams. There are two objections to this, one more serious, because less tractable, than the other.

The first objection could well come from the members of teams themselves, some of whom might with reason argue that their individual value in a market economy is far greater as part of a team of specific individuals. My answer to that is, broadly: then set up outside on your own, becoming entrepreneurs. This, after all, is capitalism. To the complaint that this would constrain their rights under employment law, I think the response is: this is about norms not laws.

Pay and collective-action problems

The second and more serious issue is that there is a collective-action problem here. Why would Firm A give up poaching/welcoming mercenaries if Firms B, C etc show no sign of doing so? One possible answer is that the stewards of Firm A might see it as being in their interests, nevertheless, to give up poaching since it would save them a lot of reputational and financial tail risk over the longer run. I'm not confident of that, as it is, perhaps, just as likely that Firm A's honest management would persuade themselves that their culture would socialize the teams they had hired rather than vice versa.

If that's right, it would seem that some kind of industry-wide cultural adjustment is needed; perhaps an informal practice of self-restraint that becomes, with time, a norm.

A collective-action problem infects pay more generally. I would not be hugely surprised if not a few industry leaders thought that pay is out of control. I would even speculate that they would quite like to see or at least would not oppose a recalibration; having already become super-rich themselves, their interests and incentives have changed, after all. But it is hard to believe that any such reflections could give them reason to act alone. Massively invested, as many are, in their particular firm's equity, they would personally see their wealth fall if, having acted alone to cut pay, their staff crossed the road to their rivals. The metaphor of not daring to leave the dance floor while the party is going works no less here than for the herd-like risk-taking behavior that preoccupies stability-policy.

I suspect that even if they wished to do so, anti-trust law might prevent industry leaders getting together to discuss this. But, in any case, isn't the very thought of a recalibration in pay a pipe dream given the globalization of finance and the different values characteristic of the various societies in which internationally active firms are domiciled?

Incentives redux: stability policy and conduct

On this front, perhaps the best we can hope for is the operation of market forces that might be set up by the new policies for stability. The changes to balance-sheet constraints (capital requirements etc) and to resolution policy (in particular bail-in of bonded debt) can prospectively reduce the headline return on equity (but not necessarily risk-adjusted returns); push equity holders to demand that they get a great share of the pie, with less left over for rent extraction by management and staff; and, separately, focus capital markets on whether economies of scale and scope do really exist. Depending on how those forces are transmitted, it is possible that the new steady-state will reduce agency problems within banks and dealers, and reduce remuneration packages.

By their nature, the lags in the transmission of these forces are, as central bankers like to say, long and variable. An important question, therefore, is how much patience society has. I would guess not much, which is reason enough for business leaders to think about what practices to jettison.

<u>Boards and regulators</u>

Where does all this leave boards and regulators, and the relations between them? If what I have been surveying is no more than one reasonable approximation of the problem, there is a long process of adjustment ahead. I will conclude, therefore, by listing some of the concrete suggestions I have aired, and what it means for board-regulator relations.

Boards picked up the following objectives on the way:

- Give up systematic regulatory arbitrage
- Reward middle management for their contributions in industry bodies as well as their contributions internally, but reward them by making it a precondition for progression in the firm and do not give financial rewards to those who decline management responsibility and the external roles it entails.
- Give up poaching whole teams
- Be ready for a systematic reduction in pay
- Encourage executive leaders to convey the values-affirming stories in the firm's history; and if there is none to speak of, face up to it and make a new beginning.

It is sometimes suggested that boards and regulators have shared objectives. This is over-stated. Boards are trying to maximize shareholder value; that is what directors get rewarded for, not only through remuneration packages but also through appointments to other boards.

Regulators, by contrast, have duties to society. Not inchoate duties or duties that they make up for themselves, but duties to deliver the specific statutory objectives given to them by legislatures. Those responsibilities need to be clear, meaning that the outturns can be monitored and that high-level trade-offs amongst society's values are not left to unelected officials. Regulators have an interest in getting legislators to do a better job at this.

A fit-for-purpose legislated framework would give powers to regulators to remove members of management and boards on 'fit and proper' grounds. This is not enforcement as punishment, with its particular burden of proof, but regulation as warranted prevention: de-authorising individuals before they have done damage. I think the UK is trying to resurrect this approach. I am not sure such powers exist in all jurisdictions.

Those two points --- about mandates and powers --- are related. Clearer objectives would make it easier to give regulators greater discretion in exercising adjudicatory powers, including crucially in relation to powerful managers and directors. That would help to harness the incentives of board members to society's sense of right and wrong, which is a necessary pre-condition for finance to remain part of the market economy and --- the reason this all matters so much --- for market economies to thrive. And if, as I suggested, detailed rules could be backed by statutory Principles, society's sense of right and wrong would be decided where it ought to be decided: in our legislatures after rich public debate.

If, as I suggested, most likely we are only a third of the way through the adjustment that finance faces and needs, there is absolutely no reason to lose hope or faith. Although I have raised questions about the design of effective statutory conduct regimes that I believe warrant debate, the authorities have done a lot of the heavy lifting within the terms of the prevailing regimes. The next phase is for business leaders, who have a great opportunity to remake finance.